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Date: 14 December 2011

To: Comprehensive Planning Committee

From: Allan Torstenson

Subject: Parkland Dedication Amendments Study Draft for Public Review

Study Initiation.

On November 18, 2011, the Planning Commission initiated a zoning study to consider the following amendments to Sec. 69.511, Parkland dedication requirements, of the Subdivision Regulations:

- 1. An amendment to § 69.511(b) to base the amount of required parkland dedication at the time of platting just on the total acreage of the new lots being created for new residential, commercial, or industrial development that would create a need for additional parkland, and not on lots for which the use would be unchanged or for something that would not create a need for additional parkland, bringing the text of this code requirement into greater conformance with state and federal law, consistent with City Council variance decisions; and
- 2. Amendments to § 69.511(d) to decouple the parkland dedication requirement at the time of building permits from parking, and replace it with different measures of density and intensity of use that are always known, easy to track, and would result in a roughly similar amount of parkland dedication so that even if a development has no parking there would still be a parkland dedication requirement, and so that the requirement is proportionate to the need for parkland created by the development as required by state law.

Background and Analysis.

Sec. 69.511, **Parkland dedication requirements**, was adopted in 2007 as part of Saint Paul's subdivision regulations, based on the enabling legislation for municipal subdivision regulations in Minnesota Statutes 462.358. It has a **two part parkland dedication requirement:**

§ 69.511(b), Parkland dedication at the time of platting, a standard base 2% of the land at the time of platting that applies to all platting of land for residential, commercial, or industrial development; *plus*

§ 69.511(d), Parkland dedication at the time of building permits, up to an additional 7% of the land at the time of building permits for residential, commercial, or industrial development based on the type, intensity and density of the use of the land.

1. Lots for New Development: Amendment to § 69.511(b), Parkland dedication at the time of platting.

There have been eight plats approved by the City Council since the parkland dedication requirements went into effect in 2007. All eight plats were for residential, commercial, or industrial development and required the standard base percentage of the land dedicated for parkland at the time of platting in § 69.511(b), Parkland dedication at the time of platting.

The City Council found that basing the parkland dedication requirement on the total acreage of the *entire* plat would have been unreasonable for two of the eight plats because use of some the new lots would be unchanged or for something other than new residential, commercial, or industrial development, and therefore would not create a need for additional parkland.

- In the case of Update Addition at 2340 Capp Road, the new plat subdivided a large industrial parcel in order to create three smaller new lots for new industrial development, with the existing industrial use on the larger parcel remaining unchanged. The unchanged existing industrial use on the larger parcel would not create a need for additional parkland.
- In the case of Carondelet Village at the southwest corner of Fairview and Randolph, the new plat subdivided a large institutional parcel to create two new institutional lots and an outlot. New senior housing development was proposed on one of the lots, with the existing use of the other lot and the outlot remaining unchanged. The outlot and the unchanged institutional use on one of the new lots would not create a need for additional parkland.

Accordingly, the City Council granted variances to base the amount of required parkland dedication at the time of platting just on the total acreage of the new lots being created for new residential, commercial, or industrial development that would create a need for additional parkland, and not on lots for which the use would be unchanged or for something that would not create a need for additional parkland. The City Council variance decisions provide direction to amend the parkland dedication requirement to avoid the need for a variance every time this situation comes up. The draft amendment to § 69.511(b) below would do this.

It is a fairly common situation that new plats in a fully developed city like St. Paul may include lots for which the use would be unchanged, would therefore not create a need for additional parkland, and consequently for which the city does not have the authority to require parkland dedication. The City Council decisions in these two cases are consistent with provisions in state law that do not allow municipalities to require dedication of parkland beyond "a reasonable portion of the buildable land" that is proportionate to a need for additional parkland created by the subdivision itself.

The Fifth Amendment to the Constitution of the United States provides that private property shall not be taken for public use without just compensation. This is reflected in Article I, Bill of Rights, of the Constitution of the State of Minnesota, Sec. 13, *Private property for public use*, which states, "Private property shall not be taken, destroyed or damaged for public use without just compensation therefore, first paid or secured."

The enabling legislation for municipal parkland dedication requirements in Minnesota Statutes 462.358, Subd. 2b is narrowly written for conformance with the Fifth Amendment and Article I, Sec. 13 of the state constitution. It does not provide municipalities with general authority to require dedication of parkland for public use without just compensation. Rather, it provides

municipalities with authority to require dedication, under a very limited set of circumstances, of "a reasonable portion of the buildable land" in a subdivision "for public use as streets, roads, sewers, . . . water facilities, storm water drainage . . ., parks, playgrounds, trails, wetlands, or open space" only to the extent that the municipality reasonably determines "that it will need to acquire that portion of land for the purposes stated in this subdivision as a result of approval of the subdivision" itself. In such circumstances, the "just compensation" is the value added to the buildable land from use of the dedicated land. Beyond that, some other form of just compensation must be paid or secured for private property taken for public use.

The enabling legislation gives municipalities authority to require dedication of land for public streets only if the subdivision itself creates a need for new public streets to serve the subdivision. Likewise, it gives municipalities authority to require dedication of land (or cash in lieu of land) for public parks only if the subdivision itself creates a need for new public parks to serve the subdivision. If the subdivision itself does not create a need to acquire land for public streets or parks, then MN Stat. 462.358, Subd. 2b does not give the municipality the authority to require dedication of land for public streets or parks. Accordingly, if use of new lots created by a subdivision is unchanged or the new use does not create a need for additional parkland, then the city would not have the authority to require dedication of parkland. The City Council decisions to grant variances to require parkland dedication based just on the total acreage of the new lots that are being created for new residential, commercial, or industrial development, and not on lots that would be unchanged or for some other use, is consistent with the requirements of state and federal law. The draft amendment to § 69.511(b) below would bring the text of this code requirement into greater conformance with state and federal law, consistent with the City Council variance requirements.

2. Decouple from parking: Amendments to § 69.511(d), Parkland dedication at the time of building permits.

§ 69.511(d), Parkland dedication at the time of building permits, responds to the requirement in Minn. Stat. 462.358, Subd. 2c, part of the state enabling legislation for municipal parkland dedication requirements as part of municipal subdivision regulations, that required parkland "dedication must bear a rough proportionality to the need created by the proposed subdivision or development." This depends on the type, intensity and density of the use of the land, which not only may not be known at the time of platting, but also changes over time.

§ 69.511(d), Parkland dedication at the time of building permits, uses parking as a proxy measure of density and intensity of use because it is always known and is relatively easy to track. Since it was adopted there has been concern about the possibility of new development that may increase the need for parkland even though the new development has little or no parking. This is a particular concern for areas such as Downtown and the Central Corridor that may need less parking because of good transit service.

Central Corridor LRT Station Area Plans adopted by the City Council on October 22, 2008, as addenda to the Central Corridor Development Strategy note the importance of additional park and recreational spaces for attaining the full potential of station areas, particularly with respect to residential development. The *Moving Forward* chapter notes that the parkland dedication ordinance links the amount of parkland dedication required to the amount of new parking

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provided in a project, while the Central Corridor Development Strategy and station area plans encourage a reduction in parking in order to promote density and transit use, and therefore recommends decoupling the parkland dedication requirement at the time of building permits from parking.

The draft amendment to § 69.511(d) below decouples the parkland dedication requirement at the time of building permits from parking, and replaces it with different measures of density and intensity of use that are always known, easy to track, and would result in a roughly similar amount of parkland dedication so that even if a development has no parking there would still be a parkland dedication requirement, and so that the requirement is proportionate to the need for parkland created by the development as required by state law.

The residential parkland dedication requirements in § 69.511(d) below are different than the commercial and industrial requirements to reflect the different need for parkland created by residential uses, a common practice in parkland dedication ordinances that have commercial and industrial requirements.

The draft parkland dedication requirement per dwelling unit in § 69.511(d)(1) below is high enough that multi-family development, particularly downtown and in mixed-use corridors such as the Central Corridor where most new residential development is expected, would typically hit the existing 7% of land maximum dedication at the time of building permits (9% maximum dedication combined with the 2% of land dedication at the time of platting). The percentage of land maximum, the rationale for which was documented (based on the requirements of state law) when the parkland dedication ordinance was first adopted and which is not proposed to change, would continue to be the determining part of the formula for most new residential development. Residential development would hit the 7% of land maximum dedication at 20 dwelling units per acre. The City Land Use Plan calls for a minimum of 30 dwelling units per acre for mixed-use corridors city-wide, and notes several recent examples of multi-family developments in mixed-use corridors with such density.

Efficiency and one bedroom dwelling units are typically in multi-family development that would hit the 7% of land maximum parkland dedication. Carondelet Village, for example, has 193 dwelling units for seniors and 66 rooms for memory care/assisted living on a 6 acre lot. Residential development on a 6 acre site would hit the maximum parkland dedication at 122 dwelling units.

An office with one employee per 300 or 400 sq. feet of floor area creates greater need for parkland than an industrial or manufacturing use with 1000 or 1200 sq. feet per employee, or a warehouse with one employee per 5000 sq. feet of floor area. The draft amendments to **§69.511(d)(2)** below reflect this, consistent with the requirement in state statutes for rough proportionality to the need for parkland created by the development.

The draft amendments to § 69.511(d)(2) below base the parkland dedication requirement for commercial and industrial development at the time of building permits on the gross floor area of the development. Gross floor area is always accurately known at the time of building permits, is not subject to very much change, and is relatively easy to track. (This would be unlike trying to keep track of the number of employees, which would not be so accurately known at the time of building permits, would be subject to more change, and also would not account for need for parkland generated by customers or guests.) Most commercial and industrial parking

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requirements are based on the gross floor area of the development. The parkland dedication requirements based on gross floor area for new commercial and industrial development in §69.511(d)(2) below are calculated to be roughly similar to the current parkland dedication requirements for commercial and industrial development based on the amount of parking.

The draft parkland dedication requirements for commercial development in § 69.511(d)(2) below are high enough that most commercial development downtown and in mixed-use corridors such as the Central Corridor, where most new commercial development is expected, would typically hit the existing 2% of land maximum dedication for commercial development at the time of building permits (4% maximum dedication combined with the 2% of land dedication at the time of platting). The percentage of land maximum would continue to be the determining part of the formula for most new commercial development. Commercial development would hit the 2% of land maximum dedication for commercial development at a floor area ratio (FAR) of 0.2. Traditional Neighborhood zoning districts, which cover most of the Central Corridor and are commonly used in other mixed-use corridors, require a minimum FAR of 0.3 to 0.5. T3 and T4 Traditional Neighborhood districts require a minimum FAR of 1.0 in light rail station areas, which are defined to cover most of the Central Corridor.

Draft Zoning Code Amendments for Public Review.

Staff recommends Planning Commission release of the following draft zoning code amendments for public review, and setting a Planning Commission public hearing for February 10, 2012.

Sec. 69.511. Parkland dedication requirements.

- (b) Parkland dedication at the time of platting. For platting of land for residential, commercial, or industrial development, the property owners, subdividers or developers shall dedicate two (2) percent of the total acreage of new lots that are being created for new residential, commercial, or industrial development the plat, on a one time basis, prior to or at the same time as recording the final plat, for the purposes listed in subdivision (a) of this section. Land so dedicated shall be within the plat and/or, subject to agreement by the city council and the subdividers, in close proximity to the plat.
- (d) Parkland dedication at the time of building permits. For new residential units, and for commercial or industrial development, the property owners, subdividers or developers shall dedicate up to seven (7) percent of the total land area of the property or cash in lieu of land, on a one time basis, for the purposes listed in subdivision (a) of this section based on the number of additional accessory off-street parking spaces, and conversion of existing commercial/industrial accessory parking to residential spaces, for increase in amount of parkland dedication required by the following standards for the new development over and above the amount of parkland dedication that would have been required by these standards for the previous use of the property.
 - (1) For <u>new</u> residential <u>units</u> development, the amount of land shall be one hundred <u>fifty</u> (100150) square feet per <u>dwelling unit</u> surface parking space and fifty (50) square feet per parking space within a structure, to a maximum of seven (7) percent of the total land area of the property.

(2) For commercial and industrial development, the amount of land shall be <u>based on the</u> gross floor area (GFA) of the new development as follows thirty (30) square feet per surface parking space and fifteen (15) square feet per parking space within a structure, to a maximum of two (2) percent of the property:

Land Use	Parkland Dedication Requirement
Commercial uses	100 sq. ft. per 1000 sq. ft. GFA
Industrial, manufacturing, limited production and processing, service business with showroom or workshop	30 sq. ft. per 1000 sq. ft. GFA
Wholesale establishment	20 sq. ft. per 1000 sq. ft. GFA
Warehousing, storage	6 sq. ft. per 1000 sq. ft. GFA

Land so dedicated shall be within or in close proximity to the development. The amount of cash in lieu of land shall be based upon the county assessor's estimated market value of the parcel of land per square foot, multiplied by one-third of the square feet of land that would otherwise be dedicated. For parking spaces for dwelling units required to be affordable under Saint Paul Housing and Redevelopment Authority or other similar financing agreements, or other contractual agreement with the city, the amount of cash otherwise required shall be multiplied by the specified percentage of Twin Cities area median income at which the unit is required to be affordable.

The city council may require the land dedication option under this subdivision (d) as a condition of plat approval, and in so doing may require that the land be dedicated prior to or at the same time as recording the final plat. In all other cases, the dedication of land or cash in lieu of land required under this subdivision (d) shall be done prior to obtaining building permits for the development to which the parking spaces are accessory, and the dedication of land shall be subject to agreement by the city council and the owners, subdividers or developers; without such agreement, cash shall be paid in lieu of land dedication.